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SERVICE DATE - MAY 8, 2003

SURFACE TRANSPORTATION BOARD

STB Docket No. AB-6 (Sub-No. 400X)

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY
–ABANDONMENT EXEMPTION–
IN FRANKLIN AND WEBSTER COUNTIES, NE

Decided: May 6, 2003

The Burlington Northern and Santa Fe Railway Company (BNSF) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon a 19.8-mile line of railroad between milepost 216.95 near Franklin, NE, and milepost 197.15 near Red Cloud, NE, in Franklin and Webster Counties, NE. Notice of the exemption was served and published in the Federal Register on March 5, 2003 (68 FR 10575-76).

By decision and notice of interim trail use or abandonment (NITU) served April 3, 2003, the proceeding was reopened, and the exemption was made subject to the conditions that BNSF shall: (1) if it observes whooping cranes within 1 mile of active abandonment or salvage activities, cease abandonment and salvage activities until the whooping cranes leave the area (U.S. Fish and Wildlife Service condition); and (2) retain its interest in and take no steps to alter the historic integrity of the right-of-way (ROW) until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470(f) (historic preservation condition).¹

On April 15, 2003, BNSF requested that the historic preservation condition be removed. In support of its request, BNSF attached a letter from the Nebraska State Historical Society (SHPO) indicating agreement that three previously-identified archaeological sites are not eligible for nomination to the National Register of Historic Places (National Register), but that one newly-discovered site is

¹ The NITU, issued under 49 CFR 1152.29 and the National Trails System Act, 16 U.S.C. 1247(d), provided: (1) a 180-day period for the Nebraska Trails Foundation, Inc., and the Lower Republican River Visionaries of Red Cloud to negotiate an interim trail use agreement for the entire line with BNSF; and (2) a public use condition that required BNSF to keep intact the right-of-way underlying the bridges, culverts, ballast and rip/rap, for a period of 180 days from the April 4, 2003 effective date. The public use condition will expire on October 1, 2003, and the trail use negotiation period is scheduled to expire on September 30, 2003.

eligible. The SHPO concluded, however, that, if the abandonment and salvage activities do not impinge on the latter site, the proposed abandonment would not have an adverse effect on it. BNSF states that the National Register-eligible site is not located within the ROW of the line to be abandoned, and that abandonment and salvage will not adversely affect the site. Upon review of the submitted correspondence SEA recommends that the historic preservation condition imposed in the April 3, 2003 decision be removed. Accordingly, the proceeding will be reopened and that condition will be removed. The U.S. Fish and Wildlife Service condition remains in effect.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the section 106 historic preservation condition imposed in the decision served April 3, 2003, is removed.
3. This decision is effective on the date of service.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary